IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.1829 OF 2004

IN

SUIT(L) NO.2965 OF 2004

R. Ramkrishnan and Ors. ... Plaintiffs.

v/s.

M/s. Rapid Developers and Ors. ... Defendants

AND

The Taxing Master and Ors. .... Respondents.

D.S. Chandnni for the plaintiffs.

CORAM: S.U. KAMDAR, J.

DATE : 15TH FEBRUARY, 2005.

P.C. :

1. The present chamber summons challenges the order passed by the Taxing Master dated 1.12.2004 inter-alia holding that the plaintiffs are liable to

pay court fees of Rs.3,00,000/-. The present suit has been filed by the five plaintiffs for specific performance of their respective agreements for purchase of the flat by seeking directions of the court for enforcement of builders obligation under Maharashtra Flat Ownership Act, 1963. This suit is filed by the plaintiffs in the representative capacity for themselves and on behalf of other flat purchasers in the said society. The said society is duly registered and known as 'Mulund Akashdeep Chs.Ltd'.

2. According to the learned counsel for the plaintiff there are in all 74 flats. The prayer 39(c) sub-clause(iii) thereof seeks direction against the defendant nos.1 and 2 to pay to the defendant no.3 Housing Board an amount of Rs.85,45,564/- within three months or within such time as the Honourable court may deem fit and proper. Further reliefs are also sought in respect of the damages which has been restricted to Rs.50,000/- to bring the present suit within the jurisdiction of this court.

3. The learned counsel has contended before me that in view of the fact that the present suit is filed merely for a direction to enforce the claims of the defendants builder under the provisions of the Maharashtra Ownership Flats Act, 1960 the suit has to be evaluated only for a sum of Rs.1,000/- and the court fees is liable to be paid on that amount and not as claimed by the Taxing Master for the sum of Rs.3,00,000/-. The learned counsel has in support of the aforesaid contention relied upon two judgments of the Apex court in the case of **Sujir keshav Nayak vs. Sujir Ganesh Nayak reported in AIR 1992 S.C. 1526 and Kamaleshwar Kishore Singh v. Paras Nath Singh and Ors reported in AIR 2002 S.C. 233.** In Kamleshwar Kishore singh (supra) the apex court has held in para-8 of the judgment that, It is well settled that the court-fee has to be paid on the plaint as framed and not on the plaint as it ought to have been framed unless by astuteness employed in drafting the plaint the plaintiff has attempted at evading payment of court fess or unless there be a provision of law requiring the plaintiff

to value the suit and pay the court fee in a manner other than the one adopted by the plaintiff.

4. For the purpose of determination of valuation of the suit for the purpose of court fees it is essentially to see the nature of plaint and nature of reliefs sought. the claim in the present suit is based on the purchase of the flat from defendant nos.1 and 2. A sample agreement annexed as Exhibit-C discloses that the purchase price agreed in respect of each flat is about Rs.4,58,100/- towards the land cost and Rs.5,56,846/- towards the cost of construction. Prayer (a) of the suit is for specific performance under Prayer (a) (iii) a further direction is sought for payment of Rs.,85,45,564/- to the defendant no.3 by defendant no.1 and 2 towards the claim of MHADA. A further decree and/or direction is sought for claim of damages which is restricted to Rs.50,000/- for the present. By prayer (e) a decree is sought for possession though it is coached in form of perpetual injunction. It is a settled law that ingemnity of drafting can not be accepted and the prayer sough

for in substence must be looked into. On the aforesaid principles it is clear that the suit in substance is a decree for specific performance and for possession and thus he suit must be evaluated accordingly for the purpose of court fees.

5. In my opinion even the apex court has also in the aforesaid judgment held that in para-8 that by clever drafting of the prayer the plaintiff cannot evade payment of court-fees. In so far as the second contention is concerned namely that the relief sought is in the nature of directions for compliance with the provisions of Maharashtra Ownership Flat Act, 1963 I am of the opinion that the present suit is not merely for enforcement of the obligation on the part of the defendant no.1 and 2 under the Maharashta Ownership Flat Act, 1963. The suit inn essence and substance is for specific performance, possession and decree for damages.

6. A reliance placed by the learned counsel for the plaintiffs on the judgment of the Mumbai High Court in the case of **Maria Phitomina Pereira vs**

Rodrigues Construction reported in 1990 (2) Bom.C.R. 77, has no application in the present case. the said case was merely for a directions to enforce obligations under the Maharashtra Ownership Flat Act, 1963. In the present case not only a specific performance and possession is sought but under prayer 39(a)(iii) a prayer for a direction to pay Rs.85,45,564/- to the defendant no.3 is also sought. this direction can not be related to any of the provisions of Maharashtra Ownership Flat Act, 1963. Similarly prayer for damages which is presently restricted to Rs.50,000/- also can not relate to any of the provisions of Maharastra Ownership Flat Act, 1963, In the aforesaid circumstances reliance placed on the judgment of the learned single judge of this court in the case of Maria Phitomina Pereira (supra) has no application.

7. In the aforesaid position of law I am of the opinion that the order passed by the Taxing Master is legal and valid and accordingly I dismiss the present chamber summons.

sd/-

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